

# Bank Secrecy Act and Anti-Money Laundering

FDIC Atlanta Region's Regulatory  
Conference Call  
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# Speakers

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# Today's Topics

- Regulatory Guidance
- Mergers and Acquisitions
- Emerging Products and Services
- Common Examination Findings
- Best Practices for an Effective BSA Program

# Regulatory Guidance

# Customer Due Diligence (CDD)

- Financial Crimes Enforcement Network (FinCEN) – proposed legislation on CDD requirements for financial institutions
- FinCEN's concern is the lack of consistency in addressing CDD obligations and collecting beneficial ownership information
- Continue using risk-based approach

# Customer Due Diligence (CDD)

- Customer Due Diligence is not just a BSA requirement, it is sound banking
  - “as reflected in recent guidance and enforcement actions, the cornerstone of a strong BSA/AML compliance program is the adoption and implementation of internal controls, which include comprehensive CDD policies, procedures, and processes for all customers, particularly those that present a high-risk of money laundering and terrorist financing. The requirement that a financial institution know its customers, and the risks presented by its customers, is basic and fundamental to the development and implementation of an effective BSA/AML Compliance Program”

# Customer Due Diligence (CDD)

- Customer Due Diligence assists management in performing an effective risk assessment
- Adequate Customer Due Diligence practices assist management in detecting and reporting suspicious or unusual activity

# Elements of Customer Due Diligence

- Conducting CDD at account opening
- Understanding the purpose and intended nature of the account and expected activity
- Identifying beneficial ownership of all customers (risk-based approach)
- Conducting ongoing monitoring of the customer relationship, including obtaining additional information as appropriate



# New Suspicious Activity Report (SAR) and Currency Transaction Report (CTR) Formats

- Effective April 1, 2013, FinCEN only accepts CTRs and SARs filed electronically through the BSA E-Filing System.
- FinCEN CTR Electronic Filing Requirements:  
<http://bsaefiling.fincen.treas.gov/news/FinCENCTRElectronicFilingRequirements.pdf>
- FinCEN SAR Electronic Filing Requirements:  
<http://bsaefiling.fincen.treas.gov/news/FinCENSARElectronicFilingRequirements.pdf>

# CTR Filing Reminders

- CTR filing deadline is 15 days for all bank filers
- **Item 20** – Form of Identification
  - A required field, including a business entity
  - Examples of “forms of identification” for an entity could include the entity’s business license or incorporation documents.

# SAR Filing Reminders

- **SAR Items 26-28** – Continuing SARs
  - **Item 26** – Amount for this SAR only
  - **Item 27** – Date range for this SAR only
  - **Item 28** – Cumulative amount (if box 1c is checked due to continuing activity report)
  - **Part V (Narrative)** – Aggregated date range of all SARs filed on the continuing suspicious activity and both cumulative and 90-day period for dollar amount.

# Mergers and Acquisitions

# Bank Merger Considerations

- Evaluate BSA/AML/Fraud risks of the target institution when considering a merger or acquisition
- BSA review should be part of your due diligence process, similar to loan review
- Develop a plan and timeline to incorporate the other bank's BSA program into your own program
- Acknowledge and plan for additional Customer Due Diligence and Enhanced Due Diligence after acquisition

# Regulatory Considerations

- During the approval process of a merger/acquisition application, the FDIC will take into consideration the effectiveness of the BSA Programs at both institutions.
- A visitation/targeted review may be warranted.

# Emerging Products and Services

# Third Party Payment Processors

- TPPPs are deposit customers of a financial institution that use their deposit accounts to process payments for merchant clients.
- TPPPs offer a variety of alternatives for accepting payments (e.g. ACH, various check methods, debit cards, etc.)
- Risks include strategic, reputational, operational, transaction, credit, compliance and legal.



# Third Party Payment Processors

- Four main elements of an effective third-party risk management process:
  1. Risk Assessment
  2. Due Diligence
  3. Contract Structuring and Review
  4. Oversight

# Virtual Currencies

- Virtual currency is a medium of exchange that operates like a currency in some environments but does not have all the attributes of real currency.
- Advantages– ease, privacy and less fees.
- Disadvantages – anonymity.
- Virtual currency exchanges are required to register with FinCEN as a Money Service Business (MSB).

# Prepaid Access Programs

- Wide range of devices that facilitate consumers' access to money electronically
- These arrangements increase the risk of fraud and money laundering and make it more difficult to identify illicit transactions
- Providers of prepaid access are required to register with FinCEN as a MSB
- BSA requirements for providers and sellers of prepaid access are similar to other categories of MSBs

# Common Examination Findings

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- Internal Control
  - Inadequate or unsupported risk assessment
  - Inadequate CDD/EDD practices
  - Inadequate training and understanding of the automated AML system
  - Failure to develop, track, and maintain strong rules/scenarios in AML software systems
  - Inadequate monitoring of unusual/suspicious activity
  - Weak processes to document investigations and conclusion to not file a SAR

# Common Examination Findings

- **BSA Officer**

- Insufficient knowledge of BSA/AML and its relationship to all business lines and operations
- Skill set not suitable for the bank's risk profile
- Lack of appropriate resources – human and technology
- Insufficient authority to execute duties
- Lack of or weak support of senior management and the board of directors

# Common Examination Findings

- Independent Testing
  - Insufficient scope of audit
  - Qualifications of the auditor are not suitable for the bank's risk profile
  - Lack of tracking and correction of identified deficiencies
  - Lack of independent testing

# Common Examination Findings

- Training
  - Employees inappropriately exempted from training requirements
  - Generic training
  - Lack of timely training
  - Inadequate BSA/AML staff training



# Best Practices for an Effective BSA Program

# Best Practices

- Comprehensive risk assessment
- Appropriate policies and procedures
- Adequate monitoring programs
- Strong training programs
- Thorough independent testing
- Qualified employee overseeing day-to-day operations

# Best Practices

- Commitment from the Board
- Providing the BSA Officer with adequate resources and authority
- Assessing new products/services
- Holding employees accountable
- Maintaining communication with regulators

# Sources

- **Advanced Notice of Proposed Rulemaking on CDD Requirements for Financial Institutions** - <http://www.gpo.gov/fdsys/pkg/FR-2012-03-05/pdf/2012-5187.pdf>
- **FAQ regarding the FinCEN CTR** - [http://www.fincen.gov/whatsnew/html/ctr\\_faqs.html](http://www.fincen.gov/whatsnew/html/ctr_faqs.html)
- **FAQ regarding the FinCEN SAR** - [http://www.fincen.gov/whatsnew/html/sar\\_faqs.html](http://www.fincen.gov/whatsnew/html/sar_faqs.html)
- **FDIC Statement of Policy on Bank Merger Transactions** - <http://www.fdic.gov/regulations/laws/rules/50001200.html#fdic5000fdics02>

# Sources

- **Third Party Payment Processors**

- January 31, 2012 – Revised Guidance on Payment Processor Relationships (FIL-3-2012) – (FDIC Guidance was first issued in 2008 – FIL-127-2008 – but was updated in 2012)
- October 22, 2012 – FinCEN Advisory on Risks Associated with Third-Party Payment Processors (FIN-2012-A010)
- June 6, 2008 – FDIC Guidance for Managing Third-Party Risk (FIL-44-2008)

- **Virtual Currencies**

- March 18, 2013 – Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (FIN-2013-G001)
- January 30, 2014 – Application of FinCEN's Regulations to Virtual Currency Mining Operations (FIN-2014-R001)
- January 30, 2014 – Application of FinCEN's Regulations to Virtual Currency Software Development and Certain Investment Activity

- **Prepaid Access Programs**

- July 26, 2011 – FinCEN Issues Prepaid Access Final Rule
- FAQ – Final Rule – Definitions and Other Regulations Relating to Prepaid Access

QUESTIONS?